

THIS ORDER APPLIES TO ALL REGULATED PHONE COMPANIES

Service Date: September 24, 1986

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition by)	UTILITY DIVISION
Mountain States Telephone and Telegraph)	
Company to deregulate Special Access)	DOCKET NO. 86.8.47
Services, Special Federal Government		
Access Services and Billing and Collections.)	ORDER NO. 5223

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ORDER

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BACKGROUND

1. On August 8, 1986, Mountain States Telephone and Telegraph Company (Mountain Bell), petitioned the Montana Public Service Commission (MPSC) , to withdraw the tariffs for special access services, special federal government access services, and billing and collections. The petition was based on Mountain Bell's assertion that these services are not switched and therefore are deregulated by the Montana Telecommunications Act, Montana Code Annotated (MCA), §§ 69-3-801 through 824 (1985).

2. Mountain Bell complied with the procedure established in the Administrative Rules of Montana (ARM) 38.5.2701 through 38.5.2717 and its petition was complete, containing all the information the MPSC requires to determine if a service is deregulated by the Montana Telecommunications Act. As required by ARM 38.5.2706, Mountain Bell notified all persons

and entities on the MPSC's telecommunication mailing list of its petition to deregulate these services.

3. As required by ARM 38.5.2705(e) Mountain Bell filed an affidavit that all customers of the services were notified of the petition to deregulate. AT&T Communications (AT&T) is Mountain Bell's only customer for special access and billing and collections. The federal government is the only potential customer for special federal government access.

4. Interested parties have the right to comment on a petition to deregulate a service and may request a hearing. ARM 38.5.2707. AT&T Communications commented in opposition to the deregulation of special access and billing and collections. No requests for hearing were received. The MPSC, at its agenda meetings on August 25, 1986, and September 2, 1986, scheduled a work session for September 2, 1986 to review this matter with MPSC staff. The matter was noticed for Commission action at the MPSC's regularly scheduled agenda meeting on September 8, 1986.

5. On September 8, 1986, the MPSC found that these services are not switched and are not incidental to a switched service. Therefore, these services are not regulated telecommunications service as defined in 69-3-803 (3) , MCA. Montana law does not give the MPSC jurisdiction to enforce rate or service regulation over these services.

FINDINGS AND ANALYSIS

6. The MPSC's determination of the status of a telecommunication service as regulated or not regulated must be based on the legal definition of regulated telecommunication in Montana found at 69-3-803(3), MCA.

“Regulated telecommunications service” means two-way switched, voice-grade access and transport of communications originating and terminating in this state and non-voice-grade access and transport if intended to be converted to or from voice-grade access and transport. Regulated telecommunications service does not include the provision of terminal equipment used to originate or terminate such service, private telecommunications service, resale of telecommunications

service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

7. It is clear from this definition that the MPSC has jurisdiction to regulate all telecommunication services that are two way switched voice grade access and transport and all services that are incidental to a switched service. “Switch” refers to an electronic device that is used to provide circuit routing and control. A switched service uses an electronic switch or switches for interconnection of circuits to establish a temporary connection between two or more stations. A “switched” service contrasts with a “hard wired” service, such as private lines, that is a dedicated circuit with a permanent connection. The MPSC finds that special access, special federal government access, and billing and collection are neither switched nor incidental to a switched service.

Special Access

8. In its petition Mountain Bell provided a complete description of special access including an engineering description as required by ARM 38.5.2705(1) (b). Mountain Bell summarized this service as:

Special Access Service provides a dedicated digital or analog transmission path to connect customer designated premises, either directly or through a telephone company hub where bridging or multiplexing functions are performed. Special Access Service includes all intraLATA private line services used to transport interLATA communication, which do not utilize telephone company end office switches. This is in contrast to Exchange Private Line Service which includes all intraLATA private line services used to transport intraLATA communications.

9. According to this description, special access service connects an interLATA private line to a local network. For example, an interLATA private line from Helena to Billings contains three distinct segments. One, the segment connecting the originating Helena end user to AT&T’s interLATA point of presence in Helena. Two, the segment that is the private line connection between the Helena point of presence and AT&T’s point of presence in Billings. Three, the segment connecting the terminating Billings end user to AT&T’s interLATA point of presence in Billings. One and three are special access service; two is private line service.

10. A private line is a pair of channels (a circuit) , providing bi-directional communication between two points. A private line is leased by a customer from a carrier and is at the exclusive disposal of the customer. On July 18, 1985, the MPSC determined that because private line service was not switched it was deregulated by the Montana Telecommunication Act. This determination, made in response to AT&T's request to consider private line deregulated, was after the enactment of the Montana Telecommunications Act but prior to the adoption of rules implementing the Act. It had the effect of deregulating both interLATA and intraLATA private lines statewide for all carriers.

11. To determine if special access is regulated the MPSC must determine if it is switched or if its is incidental to a switched service. Special access completes communication made over dedicated circuits (private lines) , and it is "hard wired" through the switching equipment, It is not a switched service and is not incidental to a switched service. Under Montana law, because it is not switched or incidental to a switched service, it is not regulated.

12. It should be noted that for intraLATA service all three segments described above make up Exchange Private Line Service. These services were deregulated on July 18, 1985, so, for intraLATA purposes, this service is already considered deregulated. It is desirable, if possible, to give similar regulatory treatment to similar services offered in the state.

13. Special federal government access services. Special federal government access service is special access service provided to a customer for use only by agencies or branches of the federal government. This service provides for command and control communications, including communications for national security, emergency preparedness, and presidential requirements. These services are provided at short notice on a temporary basis. The MPSC finds that the analysis to determine if special access is a regulated service also applies to this service; because it is not switched or incidental to a switched service it is not regulated.

Billing and Collection Services

14. Mountain Bell provided a complete description of this service as required by ARM 38.5.2705(1) (b). No engineering description is available because of the nature of the service. Four functions comprise billing and collection services - - recording, billing, billing analysis, and billing information. Mountain Bell describes these services as follows:

Recording - Recording is the entering on acceptable media, i.e., mag tape, the details of a completed long distance call. This detail is recorded as it takes place in the central office. Later, it is assembled and edited to provide individual call detail by end user customer,

Billing — This service includes the rating of individual recorded messages, processing the bill for individual accounts, rendering a bill, processing payments, journalizing and collections on past due accounts.

Billing Analysis - The provision of detection, investigation and deterrence of billing evasion activities, i.e., “black box”, “hackers”, etc.

Billings Information - The provision of information to the Carrier regarding end user customer non proprietary information, i.e., billing name and address, forecast information, etc,

15. This is the billing service Mountain Bell provides to AT&T, it is not the billing to the end user of a communication offering. The MPSC finds that this service is not switched and it is not incidental to a switched service, therefore, it is deregulated by the Montana Telecommunications Act.

16. Billing and collections is offered by a local exchange carrier to interexchange carriers only, The MPSC continues to assert jurisdiction over the billing and collection of a carrier's own communications offering because this service is clearly incidental to the offering of a switched service. The MPSC also continues to assert jurisdiction over Mountain Bell's billing practices when billing end users for AT&T services.

Objections of AT&T

17. AT&T has challenged this Commission's legal authority to deregulate special access or billing and collection, stating that deregulating either service conflicts with both the Montana Telecommunications Act and the Modified Final Judgment in United States v.

American Telephone & Telegraph Company, 552 F.Supp 131 (D.C. Cir. 1982) , aff'd 103 S. Ct. 1240 (1983) , (hereinafter the MFJ) . AT&T asserts that: one, special access cannot be deregulated and two, billing and collection can be deregulated if Mountain Bell seeks a waiver of the MFJ.

18. Special access. AT&T's position is that §69-3-824, MCA, prevents the MPSC from deregulating special access. Section 69-3-824 states:

Nothing in this part in any way preempts, abrogates, or otherwise affects any right, liability, or obligation arising from any federal or state law regarding unfair business practices or anticompetitive activity.

AT&T argues that because §69-3-824, MCA, makes it clear that any obligation arising out of the MFJ may not be abrogated or affected by the Montana Telecommunications Act the MPSC may not deregulate special access. AT&T asserts that the MFJ requires special access to be offered on a regulated basis because Section II A of the MFJ lists requirements of the Bell Operating Companies (BOCs) and states in part:

Subject to Appendix B, each BOC shall provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.
552 F.Supp. 131, 227 (1982)

19. This Commission does not agree with AT&T that applying the Montana Telecommunications Act to deregulate special access violates the MFJ. Exchange access referred to in the Section II A MFJ continues to be offered on a tariffed basis, Only nonswitched special access deregulated by the Montana legislature has been detariffed by this Commission.

20. Billing and Collection. AT&T's position is that the MFJ neither requires nor precludes a BOC from billina customers for interexchange service but if a BOC does offer an inter-exchange carrier billing and collections service it must be a tariffed service or the BOC must seek a waiver of the MFJ. This assertion is based on Appendix B (C) (2) of the MFJ which states:

Nothing in this Modification of Final Judgment shall either require a BOC to bill customers for the interexchange services of any interexchange carrier or preclude a BOC from billing its customers for the interexchange services of any interexchange carrier it designates, provided that when a BOC does provide billing services to an interexchange carrier, the BOC may not discontinue local exchange service to any customer because of nonpayment of interexchange charges unless it offers to provide billing services to all interexchange carriers, and provided further that the BOC's cost of any such billing shall be included in its tariffed access charges to that interexchange carrier.

It is possible, based on this language, that a waiver of the MFJ is needed to deregulate billing and collections.

21. For reasons irrelevant to this petition, on January 29, 1986 the Federal Communication Commission issued a Report and Order in CC Docket No. 85-88 to detariff interstate Billing and Collection Services as of January 1, 1987. One of the reasons for the delay was to "afford the BOCs ample time to obtain a waiver from the MFJ court to permit them to provide untariffed billing and collection services if the BOCs believe such a waiver is necessary." CC Docket No. 85-88, FCC 86-31 36426, pg. 26, paragraph 40. Delaying deregulation of billing and collection appears a reasonable solution to the possibility that a waiver is needed to deregulate this service. This will give Mountain Bell time to seek a waiver of the MFJ if it considers it necessary and it will deregulate interstate and intrastate billing and collection services at the same time. Although the other Montana intraexchange carriers were not party to the MFJ, it is reasonable to give these companies until January 1, 1987 to withdraw billing and collection tariffs. This will provide sufficient time to prepare for deregulation of this service.

CONCLUSIONS OF LAW

1. Mountain Bell furnishes regulated telecommunications service to consumers in Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. Section 69-3-101, MCA.

2. The Montana Public Service Commission has primary jurisdiction to determine if a service offered by a public utility is regulated under the laws of the state of Montana.

3. Mountain Bell's petition to this Commission to determine the regulatory status of special access services, special federal government access services, and billing and collections was complete and adequate notice was given to interested parties.

4. Under Montana law only switched telecommunications services and those incidental to switched services are subjects to regulation. Section 69-3-803 (3) , MCA. Neither special access, nor special federal government access, nor billing and collections are a switched service or incidental to a switched service, therefore, pursuant to §§ 69-3-803(3) and 69-3-807, MCA, the Commission does not have the statutory authority to regulate these services.

5. The Montana Telecommunications Act applies to all public utilities in Montana therefore the deregulation of a service applies to all Montana telecommunication providers.

ORDER

1. All public utilities offering special access service shall do so on a deregulated basis and shall withdraw applicable tariffs on file within 45 days of this order.

2. All public utilities offering billing and collection services to an inter-exchange carrier, shall do so on a deregulated basis beginning January 1, 1987 and shall withdraw applicable tariffs on that date.

Done and Dated this 8th day of September, 1986, by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Purcell
Acting Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.